IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 3 of 1996

1. D. P. Sharma s/o. Late
   Dasoraj Sharma,
   No. 328, T.S.P. Road,
   Fort, Bangalore -2.
2. Suresh Kumar Sharma
   s/o. D. P. Sharma,
   Major, 328, Tippu Sultan
   Palace Road,
   Fort, Bangalore -2.
3. Smt. Ramakanya Devi
   w/o. Sri D. P. Sharma
   Major No. 328, Tippu
   Sultan Palace Road,
   Fort, Bangalore -2.
4. P. Tej Raj Sharma,
   Major, s/o. Puckraj Sharma
   No. 759, 3rd block, 8th Main,
   Kormangala Layout,
   Bangalore -34.
5. Rajendra Kumar Sharma, Major,
   s/o. Tej Raj Sharma
   No. 759, 3rd block, 8th Main,
   Kormangala Layout,
   Bangalore -34.
6. Smt. Chandra Sharma, w/o.
   Sri Suresh Kumar Sharma
   Major, No. 328, Tippu
   Sultan Palace Road,
   Fort, Bangalore -2.
7. Vijay Kumar Sharma, s/o.
   Late Jayanarayan Sharma
   Major, No. 328, Tippu
   Sultan Palace Road,

Fort, Bangalore -2

8. Bhawarlal Sharma, s/o.
   Chandranmal Sharma
   Major, No. 328, Tippu Sultan
   Palace Road,
   Fort, Bangalore -2.
9. M/s. Vinayaka Investments, by its
   Managing Partner Sri D.P. Sharma,
   No. 771 to 774 , O.T.C. Road,
   Chickpet, Bangalore -53.
10. Syed Azeem, s/o. Syed Khasim,
    Major, No.1, Susheela Road,
    Doddamavalli, Bangalore 4.
11. Smt. Rohi Sultana w/o. Syed
    Sayeed Ahmed,
    Major, No.1, Susheela Road,
    Doddamavalli, Bangalore 4.
12. Nazrulla Shariff, s/o. Gaffar Shariff,
    Major, No.9, Susheela Road,
    2nd Cross , Doddamavalli, Bangalore 4.
13. Sheik Habeebur Rehaman,
    s/o. Sheik Anwar Rahaman,
    Major, No.32, NAS Garage,
    Harekempanahalli, 8th Cross,
    Wilson Gardens, Bangalore 27.
14. Noorulla Shariff, Major,
    s/o. Abdul Gaffar Sheriff,
    No. 13, F Cross, Bismilla Nagar,
    Bannerghatta Road, Bangalore 29.
15. M/s. Azad Body Builders,
    8th Mile Stone, Mysore Road, by its
    Managing Director, Sri B.S. Chadda.

16. Sri Manoharan, Major, s/o. Govindswamy,
    No.9, Chickenna Gardens,
    Shakarapuram,
    Bangalore -4.
17. Mrs. K. K. Sbherwal, w/o. Sabharwal,
    Major, No. 1137, 100 ft. Road, HAL 2nd stage,

Indira Nagar, Bangalore -8. .. Petitioners

V/S

1. The State of Maharashtra,
   by its Secretary to the Government,
   Transport Department, Bombay.

2. The Transport Commissioner of
   Maharashtra, 1st floor, Mittal
   Chambers, Nariman Point,
   Bombay 23.

3. The Regional Transport Officer,
   Kolhapur, Khagal Checkpost,
   Kholapur, Maharashtra.

4. The Regional Transport Officer,
   Washi Checkpost, Washi ,
   Maharashtra ... Respondents

Shri G. S. Hegde, advocate for the petitioners.
Ms. Mengnane AGP for respondent nos. 1 to 4.

CORAM: **SMT. R. P. DESAI**
&
SHRI A. P. DESHPANDE JJ.

DATE: 21/7/2006

ORAL JUDGMENT (Per DESHPANDE J.)

1. Heard.

2. The petitioners are transport operators having their principle place of business at Bangalore in the State of Karnataka. The

petitioners are operating tourist vehicles and for that purpose they have obtained tourist permits from the State Transport authority from Karnataka under section 88 of the Motor Vehicles Act. The State Transport Authority , Karnataka, has issued authorization in favour of the petitioners to operate in the State of Maharashtra. The petitioners claim that according to the conditions attached to the permit the petitioners have a right to carry goods in addition to the luggage of the passengers and thus plying of the vehicles in tuen with the conditions of permit cannot be interfered with by the respondent authorities. The grievance of the petitioners is that since December 1995 the respondent authorities from Maharashtra have started intercepting the buses, issuing check reports recording the reasons that the tourist vehicles are found carrying goods / luggage on top / roof of the vehicles and due to the height and uneven weight of the luggage there is a possibility of the vehicle loosing the balance and hence the carriage of the goods on the roof of the vehicle is impermissible. It is then contended that prior to December 1995 though the petitioners vehicles were

carrying goods on the roof / top of the vehicles they were never checked and found to be plying the vehicles in violation of the provisions of the Act or the Rules.

3. It is categorically averred in the petition that the authorities working under the respondent nos. 3 and 4 are obstructing the smooth operation and an amount of Rs.1500/- has been collected by compelling the petitioners to compound the offences. On the aforestated averments two fold prayers are made: (1) It be declared that the respondents cannot levy and collect the compounding fees for carrying goods on roof/ top of the vehicles and (2) a writ of mandamus is sought preventing the respondent nos. 3 and 4 so also their subordinates from levying and collecting the compounding fees from the petitioners on account of the alleged commission of the offence of carrying goods on the roof of the vehicles.

4. An affidavit in reply has been filed on behalf of the respondent authorities refuting the right of the petitioners to carry goods/ luggage on the roof of the vehicles. It is contended by the respondents that Rule 128 of the rules

framed under the Central Act by name Central Motor Vehicles Rules, 1989 regulate tourist vehicles other than motor cabs, etc. Rule 128 is a special provision made especially to regulate and lay down specifications of the tourist vehicles. The specifications provided for under Rule 128 specifies where the luggage holds shall be provided. The respondents are contending that the luggage holds can only be provided at the rear or at the sides or both of the tourist vehicle and placing reliance on the specifications in the special provision contained in Rule 128 it is submitted that placing luggage on the roof of the tourist vehicle is impermissible by necessary implication flowing from Rule 128(9) of the Rules.

5. It is then submitted that the special provision dealing with the specifications referred to hereinabove only permits carrying of the luggage and carrying of goods in contradistinction to carrying of luggage, is wholly impermissible. A distinction is sought to be made by the respondents in the terms 'luggage' & 'goods' by contending that luggage refers to the goods carried by the passengers and the word 'goods' imply the goods owned by other

consignors , who are not the passengers.

6. In the present case the petitioners have tried to make out a case that they were compelled to shell out a sum of Rs.1500/- under the garb of compounding fees for the compounding of the alleged offence of carrying the goods / luggage on the roof of the tourist vehicles. The notice / memo/ compounding receipts do not indicate that the petitioners were faulted for carrying the goods, as such the question as to whether goods which are not owned by the passengers could be carried in a tourist vehicle or otherwise is not an issue germane in the facts of the present case and the same does not need any adjudication in the present petition. We leave the question open to be dealt with in an appropriate matter.

7. Reversing back to the controversy, the respondent authorities on the one hand claim that having regard to the mandatory specifications provided under Rule 128 the tourist vehicles cannot carry goods / luggage loaded on the top / roof of the vehicles whereas the petitioners contend that in the absence of any definite explicit prohibition in regard to the carrying of the goods / luggage on roof of the vehicle the petitioners

cannot be restrained from doing so. This being the only issue and as the same hinges on the interpretation of Rule 128 we chose to reproduce the relevant rule below.

Rule 128 reads thus: Special provisions

> "128. **Tourist vehicles other than motor cabs, etc.** - A tourist vehicle other than motorcab, taxicab, campers van house trailer, shall conform to the following specifications, namely:-
>
> [(1) The dimension shall conform to the dimensions specified in rule 93]
>
> (2) *Structure.* - Structure of the tourist vehicle should be sturdy and strong structural frame work using suitable material of adequate sectional area and an aerodynamical shape. For exterior panelling, aluminum sheet or good quality panelling material should be used. As regards interior paneling it should cover the entire interior roof, sides, back and bulk head portions. The body should be made completely leakproof and dustproof. The vehicle should be rattle proof. Sound deadening should also be done for all panelling including the floor.
>
> (3) *Passenger entrance and exit.* - The passenger entrance – cum – exit door shall be

located on the left side of the vehicle and minimum door width shall be 685 millimeters. The door handle should be capable of being handled from inside as well as from outside. The door may be operated pneumatically or hydraulically or electrically with suitable locking devices.

(4) *Emergency doors* - Emergency exit in the form of a door, hinged in the front, shall be provided on the offside of the tourist vehicle and shall be capable of being operated both from the inside and the outside of the tourist vehicle, or where it is not practicable to have such a door, an emergency exit from the rear window screen may be provided.

The emergency exit shall be prominently identified in red letters “Emergency exit” from the inside.

5. *Driver entry and exit* - A separate door with suitable sliding window shall be provided for the driver near the driver seat.

6. *Windscreen* (i) The front windscreen shall be of clear view and distortion free, with safety glass and shall be of full width of the tourist vehicle. If made in two halves, the width of the centre vertical joint, inclusive of the rubber

glazing fitment of the front wind-shield shall be such as to enhance the elegance of the tourist vehicle.

(ii) Rear windscreen shall be of safety glass or laminated safety glass. It shall match with the windows provided on the vehicle. Sliding curtains shall be provided on the rear windscreen.

7. *Windows* – Windows of tourist vehicles should have a minimum space of 14.25 millimeters and shall be of safety or laminated safety glass.

Windows shall be of double sliding type slider running smoothly in channels without rattle. All safety or laminated safety glasses used for windows should conform to standards laid down by the Bureau of Indian Standards. Windows shall be provided with sliding curtains.

8. *Ventilation* – Adequate arrangements shall be provided for ventilation for the passenger compartment as well as the driver compartment. All ventilators and windows shall be such that when closed they will not permit ingress of rain water or dust in the passenger or driver compartment.

9. *Luggage* – (i) Luggage holds shall be provided at the rear or at the sides, or both, of the tourist vehicle with sufficient space and size, and shall be rattleproof, dustproof and water proof with safety arrangements;

(ii) The light luggage racks, on strong brackets shall be provided inside the passenger compartment running along the sides of the tourist vehicle. Except where nylon netting is used, the under side of the rack shall be padded upholstery to protect the passengers from an accidental hit. The general design and fitment of the rack shall be so designed as to avoid sharp corners and edges.

10. *Seats and sitting arrangements.*

(ii) Seating layout shall be (two and two or one and two or one and one) on either side, all seats facing forward, with a clear gangway of at least 355 millimeters width at the centre. Each passenger seat shall have a minimum area of 447 millimeters x 457 millimeters and an arm rest on both sides and seat back of full height.

(iii) The seat frames shall be sturdy, properly finished and so mounted as to transfer the weight directly to the structural members of

frame -work. The seat shall be of reclining type and adjustable.

(iv) The seats shall be so mounted as to provide at least 280 millimeters leg room from the front of the rear seat to the back of the front seat. A foot rest at suitable location and height shall be provided for every passenger.

11. *Painting and finishing* – The tourist vehicle shall be painted in a manner referred to in sub rules (7) and (8) of rule 85-A in white colour with a blue ribbon of five centimeters width at the centre of the exterior of the body.

12. *Lighting* – (i)(a) The passenger compartment shall be adequately illuminated.

(b) Arrangement shall be provided to eliminate reflection of the light from the passenger compartment on the windscreen.

(c) In addition to the lights in passenger compartment, at least two night – lights with coloured domes, shall be provided in the passenger compartment.

(ii) Front and rear destination boxes, if provided, shall be illuminated.

(iii) One independently operated light fitting shall be provided for the illumination of the driver' s roattendant' s seat area.

(iv) A light fitting shall be provided for illuminating the steps at the passenger entrance door.

(v) Each luggage hold shall have a light fitting for illumination of that hold.

(vi) Wiring in the passenger compartment shall be with low tension cable conforming to IS: 2465 of size commensurate with the estimated current loading. The wire shall be carried in PVC sleeving or conduit or casing of adequate size. When any wire passes through a hold in a panel or sheet metallic components, a rubber grommet of adequate size shall be provided for protection of the insulation.

13. *Fittings and accessories* - A tourist vehicle shall be equipped with the following – namely .-

(i) Convex rear view mirrors one on each side, universally adjustable and of adequate dimension.

(ii) First -aid box with glazed front with necessary medicines for first aid.

(iii) Fire extinguisher , dry powder type located near the engine compartment.

(iv) Insulation on interior or exterior of the engine bonnet for reducing noise and heat from the engine.

(v) Provision for locating vehicle tools securely.

(vi) Heavy duty windscreen wiper system.

(vii) Adjustable sunvisors of adequate size for the driver and for the attendant.

(viii) Electrically operated wide indicators or blinkers, stop lights and parking lights.

(ix) Dual headlamps.

(x) Suitable illumination for the registration number plate at the rear.

(xi) Horn.

(xii) Electric fans, of 8 inches sweep adjustable, at least eight in number suitably spaced in the passenger compartment and controlled by switches located near the seat.

(xiii) Electric bell or buzzer located near the seat of the driver or attendant and operated by at least four push button controls placed at suitable location in the passenger compartment.

(xiv) Ash trays near passenger seats of a design convenient for cleaning them at intermediate stops of the tourist vehicle.

(xv) Drinking water and ice box.

(xvi) Rack for magazines and other reading material.

(xvii) Back pockets and numbers for each seat.

(xviii) Public address system with at least four speakers suitably located in the passenger compartment.

(xix) Document frame, located near the seat of driver , for carrying vehicle documents , tax token, licence and permit.

(xx) Mud flaps for front and rear wheels.

[Provided that provisions of clauses (2) and (7) and sub clause (iv) of clause (12), sub – clauses (ix), (xii) and (xiii) of clause (13) of this rule shall not apply to the vehicles of integral construction."

14.As Rule 128 is a special provision meant for laying down specifications for a tourist vehicle the same will have to be construed having regard to the object sought to be achieved by the said provision. (1) The specifications laid down deal with the dimensions of the vehicle; viz. length, width, the rear and over head portions (2) the nature and quality of structure, 3) the provisions for entry and exit of passengers and the facilities to be provided for, 4) provision for emergency doors, 5) driver' s entry and exit, 6) windscreen,7) windows, 8) ventilation, 9) luggage, 10)seats and seating

arrangements, 11)painting and finishing, 12) lighting, 13) fittings and accessories.

Perusal of sub rule 9 which pertain to luggage clearly indicates that the luggage holds shall be provided at the rear or at the sides or both, of the tourist vehicle with sufficient space and size, and shall be rattleproof, dustproof and water proof with safety arrangements. Heavily placing reliance on the sub rule 9 the learned AGP submitted that the use of the word “shall” in sub rule 9(i) is indicative of the mandatory nature of the rule which in terms provides that the luggage holds shall be provided at the rear and at the sides or both. It is thus submitted that when the rules specifically makes a provision in regard to the place where the luggage holds shall be provided, by necessary implication it goes to exclude all other places of the tourist vehicle for being used as luggage holds. It is next submitted that when a statute requires a particular thing to be done in a particular manner, it has to be done in that manner only or not at all. We see merit in the submission of the learned AGP appearing for the respondents.

15. On the other hand learned advocate appearing for the petitioners strenuously urged that as the violation of the provision results in penal consequences the provision needs to be strictly construed and in the event of ambiguity or in the event of two views being possible, the one in favour of the subject viz., the operators of the vehicle, needs to be preferred.

The specifications are aimed at securing safety and security of the passengers so also the luggage and thus the same needs to be meticulously adhered to. It has been stated in the affidavit in reply that on account of the loading of the luggage on the roof of the vehicle in huge quantities or weights, unevenly kept, is likely to result in exposing the vehicle to accidents and as such the respondents insistence in not permitting keeping of the luggage on the roof of the vehicle is justified.

16. Having regard to the language used in sub rule 9 (i) which mandates that the luggage holds shall be provided at the rear or at the sides or both, what is intended is exclusion of the making of a provision for luggage holds at any other place. Sub rule 9(i) is indicative of the mandatory nature of the

provisions as the phraseology used is " that the luggage holds shall be provided at the rear or at the sides or both of the tourist vehicle .....". 'Shall' is ordinarily used to indicate the provision to be mandatory. It is also settled position of law that if a provision requires a thing to be done in a particular manner, it has to be so done, or not at all. When the provision indicate place or places where luggage holds are to be provided, by necessary implication, other places for luggage holds stands excluded. In this view of the matter we proceed to accept the interpretation of Rule 128 (9) as contended by the learned counsel for respondents. We are not accepting the submission of the petitioners that in the absence of a specific restriction in regard to having luggage holds / carrier on the roof of the vehicle the petitioners cannot be prevented from carrying the goods / luggage on the roof of the vehicle. On the contrary we are of the clear view that luggage has to be stored at the places specifically permitted by sub rule 9(i) viz., at the rear or at the sides or both, but not at the roof of the vehicle.

17. There being no merit in the petition the same stands

dismissed with no order as to costs.

18. At this stage learned advocate appearing for the petitioners states that an interim order is operating in this petition since 1996 and the same be continued for a period of 8 weeks. The learned AGP opposes the prayer. In the circumstances we are inclined to extent the interim order for a period of 4 weeks from today.

(SHRI A. P. DESHPANDE J.) (SMT. R. P. DESAI J)